

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. OSAB 2002-35
	)	Discrimination Complaint
CRAIG A. GOMES,)	
	)	ERRATA FOR ORDER NO. 87
Complainant,)	
)	
vs.)	
)	
HAWAIIAN ELECTRIC COMPANY,)	
)	
Respondent,)	
)	
and)	
)	
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	
)	
Appellee.)	
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ERRATA FOR ORDER NO. 87

Text was inadvertently deleted from the top of page 2 in the printing of Order No. 87, issued on January 29, 2004. The sentence beginning on the last line of page 1 should read:

On December 17, 2003, Respondent filed a Memorandum in Opposition to Motion to Strike and/or Dismiss Hawaiian Electric Company, Inc.'s December 8, 2003 Filing responding that Complainant's request for reconsideration was prematurely filed as there was no written order for the Board to reconsider and that there was good cause for filing the response when she did.

In addition, the Notice to Employer to post the Order prior to the trial date is inappropriate and should also be deleted.

DATED: Honolulu, Hawaii, February 3, 2004.

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair

CRAIG G. GOMES v. HAWAIIAN ELECTRIC COMPANY, et al.
CASE NO. OSAB 2002-35
ERRATA FOR ORDER NO. 87



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

Craig A. Gomes
Cynthia Winegar, Esq.
Leo B. Young, Deputy Attorney General

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. OSAB 2002-35
	)	Discrimination Complaint
CRAIG A. GOMES,)	
	)	ORDER NO. 87
Complainant,)	
	)	ORDER GRANTING COMPLAINANT'S
vs.	)	MOTION TO STRIKE RESPONDENT'S
	)	DECEMBER 8, 2003 FILING AND DENYING
HAWAIIAN ELECTRIC COMPANY,	)	COMPLAINANT'S REQUEST TO RECON-
	)	SIDER DISMISSAL
Respondent,)	
)	
and)	
)	
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	
)	
Appellee.)	

ORDER GRANTING COMPLAINANT'S MOTION
TO STRIKE RESPONDENT'S DECEMBER 8, 2003 FILING AND
DENYING COMPLAINANT'S REQUEST TO RECONSIDER DISMISSAL

At the hearing scheduled in this matter on November 19, 2003, the Hawaii Labor Relations Board (Board) orally granted Respondent HAWAIIAN ELECTRIC COMPANY's (HECO) motion to dismiss this case with prejudice due to Complainant's failure to prosecute the case and the harm caused to Respondent due to delays and the incurring of fees. Thereafter, on November 24, 2003, Complainant filed a Request for Reconsideration of Dismissal Due to Extenuating Circumstances with the Board. In his request, Complainant requested reconsideration of the dismissal of his case because his witnesses had been available on a previously scheduled hearing date, October 3, 2003, which had been continued, and on November 19, 2003, "Reverend Yoshida arrived late, but Mr. Frank arrived after the hearing had been dismissed." Complainant states that the lateness of his witnesses was due to being "stuck in unusually heavy traffic reportedly brought on by bad weather."

Thereafter, Respondent HECO filed a Memorandum in Opposition to Complainant Craig A. Gomes' Request for Reconsideration of Dismissal Due to Extenuating Circumstances with the Board on December 8, 2003. On December 11, 2003, Complainant filed a Motion to Strike and/or Dismiss Hawaiian Electric Company, Inc.'s December 8, 2003 Filing contending Respondent's filing was untimely. On December 17, 2003,

prematurely filed as there was no written order for the Board to reconsider and that there was good cause for filing the response when she did.

After considering the motions and arguments raised on Complainant's motion to strike Respondent's December 8, 2003 filing, the Board agrees that Respondent's December 8, 2003 filing is untimely and accordingly strikes the filing.

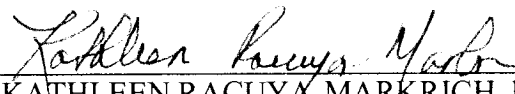
After considering the record and Complainant's arguments in his request to reconsider the dismissal of the instant case, the Board finds and concludes that Complainant failed to present his witnesses at trial and was given several opportunities to proceed with his testimony. Complainant, however, represented that he did not intend to testify and the Board gave Complainant the opportunity to reconsider because his witnesses were not present and he had the burden of proof. After consideration, Complainant represented that he was not prepared to testify and go forward with his case and pursuant to Respondent's motion to dismiss the case, the Board orally dismissed Complainant's case. Thus, given the record in this case and the prejudice to Respondent, the Board is not persuaded by Complainant's arguments to reconsider its ruling because of his statements that his witnesses were delayed in traffic and therefore denies Complainant's request to reconsider its dismissal of his case.

DATED: Honolulu, Hawaii, January 29, 2004.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date.

CRAIG G. GOMES v. HAWAIIAN ELECTRIC COMPANY, et al.

CASE NO. OSAB 2002-35

ORDER NO. 87

ORDER GRANTING COMPLAINANT'S MOTION TO STRIKE RESPONDENT'S
DECEMBER 8, 2003 FILING AND DENYING COMPLAINANT'S REQUEST TO
RECONSIDER DISMISSAL

Copies sent to:

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Leo B. Young, Deputy Attorney General